

7

United States District Court  
For The Eastern District Of Michigan  
Southern Division

UNITED STATES OF AMERICA  
Respondent

vs

JAMES DEVON KING  
Petitioner

>  
> CASE No. 05-50082  
> NOTICE OF MOTION; MOTION FOR REDUCTION  
> OF SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)  
> AND THE FIRST STEP ACT 2012  
>  
>  
>  
>

MOTION FOR REDUCTION OF SENTENCE  
PURSUANT TO FIRST STEP ACT 2012

PLEASE TAKE NOTICE JAMES DEVON KING, PRO-SE, hereby respectfully  
MOVES THIS COURT TO "grant" KING's PETITION FOR RELIEF  
UNDER FIRST STEP ACT OF 2012, AN ACT TO RESTORE FAIRNESS  
TO FEDERAL COCAINE SENTENCING.

"KING possess 50grams of COCAINE base AND RECEIVED  
360 MONTHS. IF SENTENCE TODAY HIS SENTENCE WOULD  
BE LIGHTER AS OPPOSE TO 16 YEARS AGO.

## Jurisdiction

This Court has Original Jurisdiction  
To Title 18, United States Code, Section 3231.

The Court May Review the Underlying  
Sentence Under Title 18, Under States  
Code Section 3742.

A. King was indicted by Grand Jury  
For 50 grams of Cocaine base.  
Petitioner had a prior conviction  
which enhanced his sentence.

1. Petitioner sentenced under 851  
Statute, and was sentenced under  
Guideline U.S.S.G. § 4B1.1

2. Petitioner has not received any  
benefits from Amendments, 706, 750, nor  
All Drugs Minus Two, nor 782, Fair Sentencing Act  
2010, nor First Step Act of 2018.

3. The Federal Bureau of Prisons calculates  
King's current release to be 5-20-2032.  
30 YRS

### LEGAL ANALYSIS

THE FIRST STEP Act, S. 756, WAS ENACTED DEC 21, 2018. SECTION 404 OF THE Act PERMITS THIS COURT, UPON MOTION OF PETITIONER OR THE GOVERNMENT, OR UPON ITS OWN MOTION, TO IMPOSE A REDUCE SENTENCE ON CERTAIN OFFENSES IN ACCORDANCE WITH THE FAIR SENTENCING Act OF 2010, IF NO SUCH REDUCTION WAS PREVIOUSLY GRANTED. IT READS:

#### SEC. 404 Application OF FAIR SENTENCING Act.

(a) DEFINITION OF COVERED OFFENSE — In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2023 of the FAIR SENTENCING Act OF 2010 (Public Law 111-220; 124 STAT. 2372), that was committed before Aug 3, 2010.

THE COURT OR BUREAU OF PRISONS, OR GOVERNMENT MAY IMPOSE A REDUCE SENTENCE AS IF SECTIONS 2 AND 3 OF THE FAIR SENTENCING Act OF 2010 (Public Law 111-220; 124 STAT. 2372) WERE IN EFFECT at the time the COVERED OFFENSE WAS COMMITTED.

First Step Act, S. 756, 115th Cong., § 404 (2018)

Section 2 of the Fair Sentencing Act of 2010 reduced the penalties for offenses involving cocaine base by increasing the threshold quantities required mandatory minimum sentences under 21 U.S.C. § 841(b)(1). Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372 (2010). After the statute's enactment, a violation of 21 U.S.C. § 841(a)(1) must involve at least 28 grams of cocaine base, rather than 5 grams, to trigger the 5 to 40 year penalty range of 21 U.S.C. § 841(b)(1)(B).

This Court should utilize the same procedures it has historically employed when retroactive guideline reductions are implemented.

Under normal circumstances, 18 U.S.C. § 3582(c) prohibits modifications to sentences once imposed, unless an enumerated exception exists. Once statute expressly permits modification of a previously-imposed sentence, as the Fair Step Act does, 18 U.S.C. § 3582(c)(1)(B) ("The Court may modify an imposed term of imprisonment to the extent otherwise expressly by statute").

There is little case law addressing appropriate procedures when considering a modification of sentence "expressly permitted by statute" under § 3582(c)(1)(B). There may be case laws addressing modification allowed by Rule 35 of the Federal Rules of Criminal Procedure, also permitted under § 3582(c)(1)(B), and modifications arising from retroactive guideline amendments, permitted by § 3582(c)(2).

In short, the Court should recalculate the advisory guideline range under current law and pursuant to the now-operative version of the United States Sentencing Guidelines, assess the section 3553(a) factors based on the facts in the record, and issue a new sentence, without conducting a full resentencing hearing.

In this instance, King is eligible for a reduction and the Court should consider the applicable sentencing factors of 18 U.S.C. § 3553(c) determining whether, and to what extent, a reduction may be warranted.

After a lengthy term of imprisonment, Petitioner no longer poses a danger to the public before he is release from the jurisdiction of the Court.

I declare and verifies and states under penalty of perjury that the facts stated in the foregoing motion is true and correct to best of my knowledge and belief.

Executed on JUNE-22-2020, pursuant to 28 U.S.C. § 1746.

*James King*  
JAMES DEVON KING

### Relief Sought

PETITIONER REQUESTS THIS COURT TO GRANT  
HIS MOTION FOR REDUCTION OF SENTENCE AND  
CONSIDER 3553(a) FACTORS AND HIS REHABILITATION  
EFFORTS SINCE INCARCERATION.

FOR THESE REASONS KING RESPECTFULLY REQUESTS  
THIS COURT MODIFY KING'S SENTENCE, IN  
LIGHT OF FIRST STEP ACT OF 2012 AND 18 U.S.C. § 3582  
(C)(1)(B), TO A SENTENCE OF TIME-SERVE.

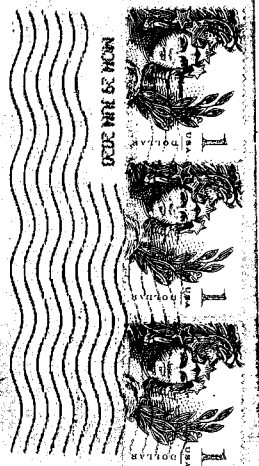
Respectfully Submitted

*James King*  
JAMES DEVON KING

MR. KING REQUEST THE COURT TO APPOINT  
ADEQUATE REPRESENTATION UNDER § 3006A.

NAME: James T. Lister  
REG # 35491-039  
Federal Corrections Institution #11111  
P. O. Box 10  
Lisbon, Ohio 44432

RECEIVED  
JUL 07 2020  
U.S. DISTRICT COURT  
FLINT, MICHIGAN



6/29/20

DAVID J. WEAVER  
600 Church St  
Room 140  
FLINT, MICHIGAN  
48502